IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 626 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH

Versus

BALUBHAI D PATEL

Appearance:

MR BJ TRIVEDI for MR KI SHAH for Petitioner

MR KR RAVAL for Respondent No. 1

MR HL JANI Ld. APP for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/09/2000

ORAL JUDGEMENT

In this acquittal appeal impugned judgment and order of acquittal dated 29.7.1987 rendered by the learned J.M.F.C., (Surat Municipal) Surat in PFA Case No. 55/1983 has been subjected to challenge. The respondents

being the accused in the PFA case were prosecuted for the offence punishable under sec. 7 read with sec. 16 of the Prevention of Food Adulteration Act, 1954 (for short 'the PFA Act') on the following brief facts:

Mr RU Shah, Food Inspector, Surat Municipal Corporation, stopped the accused who was proceeding with two Tin Cans containing 30 liters of buffalo milk on his bycicle. The complainant purchased buffalo milk for sample after following the procedure. He prepared three samples in three different bottles after adding required preservatives. Out of the three samples, one sample was sent for examination by the Public Analyst. Upon receipt of the report of the Public Analyst indicating that the sample of milk did not conform to the prescribed standard of buffalo milk, the complainant filed aforesaid PFA case before the learned Magistrate. After recording the evidence and hearing the parties, learned Magistrate upon appreciation of evidence came to the conclusion that following of the procedure prescribed under the provisions of the PFA Act and the Rules made thereunder for taking of sample of buffalo milk was not established beyond reasonable doubt. There are contradictions with regard to the use of measure/instrument in taking out the sample of buffalo milk from the Can; the complainant used the measure requisitioned from the nearby place instead of using the measure which was already with him. There are also contradictions with regard to the length of the measure which might have adversely affected stirring of the milk necessary for appropriate sampling of buffalo milk. Now on examination of the report of the Public Analyst appearing at exh. 20, it would appear that the fat is found to be less by 0.3%, although the Public Analyst has clearly comitted an error on the face of the certificate in observing that the fat was less tothe extent of 5.0%. It might be noted that the required standard is 6.0% fat whereas the finding is 5.7% fat. Against this finding regarding fat, Solids Not Fat are more by 0.6%. In the back-ground of state of such report of the Public Analyst, appreciation of evidence by the learned Magistrate can hardly be faulted in this acquittal appeal.

In the result, this acquittal appeal is dismissed.

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